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OFFICE OF PETITIONS

In re Application of :
Zook et al. :
Application No. 10/648,812 : DECISION ON APPLICATION
Filed: August 26, 2003 : FOR
Atty Docket No. 690068.569 : PATENT TERM ADJUSTMENT
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed December 15, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) to two (2) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two **(2)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 28, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. The period of adjustment of 2 days for Office delay was reduced by 21 days for applicant delay. On December 15, 2004, applicants timely¹ submitted an

¹ PALM records indicate that the Issue Fee was also received in the Office on December 15, 2004.

application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is 2 days. Applicants dispute the reduction of 21 days attributed to delay in responding to the Notice to File Missing Parts of Application mailed November 18, 2003. Applicants state that their response was received in the Office on January 16, 2004, and thus, there was no applicant delay.

Applicants further state that the patent issuing from the application is not subject to a terminal disclaimer.

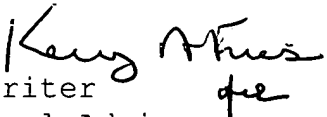
Applicants are correct. Their response to the Notice to File Missing Parts of Application mailed November 18, 2003, is of record in the application with a date of receipt by the Office of January 16, 2004. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have assessed applicant a delay of 21 days. The response was filed within the three-month period under 37 CFR 1.704(b). Applicants did not fail to engage in reasonable efforts to conclude prosecution of the application by delaying in replying to the Notice to File Missing Parts of Application.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is TWO (2) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will forward the file to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen